



## BOARD OF SELECTMEN

### CALENDAR FOR

### TUESDAY, NOVEMBER 15, 2016 SELECTMEN'S HEARING ROOM

- Neil Wishinsky-  
Chairman
- Nancy A. Daly
- Benjamin J. Franco
- Nancy S. Heller
- Bernard W. Greene
- Melvin A. Kleckner –  
Town Administrator

1. **OPEN SESSION**

- 5:00 P.M.** Question of whether the Board of Selectmen shall enter into Executive Session for the purpose of discussing strategy with respect to litigation in the matter of Town of Brookline et al v. MassDevelopment et al

2. **PROPOSED EXECUTIVE SESSION  
LITIGATION**

For the purpose of discussing strategy with respect to litigation in the matter of Town of Brookline et al v. MassDevelopment et al.

3. **ANNOUNCEMENTS/UPDATES**

- 6:00 P.M.** Selectmen to announce recent and/or upcoming Events of Community Interest.

4. **PUBLIC COMMENT**

Approval of miscellaneous items, licenses, vouchers, and contracts.

- A. **Public Comment period for citizens who requested to speak to the Board regarding Town issues not on the Calendar.**  
*Up to fifteen minutes for public comment on matters not appearing on this Calendar shall be scheduled each meeting. Persons wishing to speak may sign up in advance beginning on the Friday preceding the meeting or may sign up in person at the meeting. Speakers will be taken up in the order they sign up. Advance registration is available by calling the Selectmen's office at 617-730-2211 or by e-mail at [sorsini@brooklinema.gov](mailto:sorsini@brooklinema.gov). The full Policy on Public Comment is available at <http://www.brooklinema.gov/376/Meeting-Policies>*

5. **MISCELLANEOUS**

Approval of miscellaneous items, licenses, vouchers, and

**contracts.**

**Question of approving the minutes of November 9, 2016.**

**6. CALENDAR**

**Review and potential vote on Calendar Items**

**7. BUILDING DEPARTMENT – PERSONNEL**

**Question of authorizing the filling of the Local Building Inspector (GN-12) vacancy in the Building Department.**

**8. FIRE DEPARTMENT – PERSONNEL**

**Question of authorizing the filling of Firefighter vacancies.**

**9. HOLIDAY PARKING WAIVER**

**Economic Development Director Kara Brewton will appear to request a waiver of metered parking fees on behalf of local merchants and merchant associations for the following events in support of visiting, supporting, and shopping in Brookline business and commercial districts:**

**November 26, 2016 for Small Business Saturday (all day)**

**December 1, 2016 for First Light Festival (5-8pm)**

**10. BOARDS AND COMMISSIONS - APPOINTMENTS**

**Question of making appointments/reappointments to the following Boards, Commissions, and Committees:**

**Conservation Commission**

**9<sup>th</sup> School at Baldwin Project Oversight Committee**

**11. WARRANT ARTICLES**

**Question of reconsidering the Board's vote on the following Warrant Articles for the November 15, 2016 Special Town Meeting:**

**Article 4 Tobacco**

**Article 22 FAR**

**12. WARRANT ARTICLES**

**Further review and possible reconsideration of the Board's**

**vote on Warrant Articles for the November 15, 2016  
Special Town Meeting.**

*The Town of Brookline does not discriminate on the basis of disability in admission to, access to, or operations of its programs, services or activities. Individuals who need auxiliary aids for effective communication in programs and services of the Town of Brookline are invited to make their needs known to Lloyd Gellineau, Town of Brookline, 11 Pierce Street, Brookline, MA 02445. Telephone (617) 730-2328; TDD (617) 730-2327; or e-mail at [Lgellineau@brooklinema.gov](mailto:Lgellineau@brooklinema.gov)*





**Town of Brookline**  
*Massachusetts*

Authorization To Hire Request Form

1. Position **TITLE:** LOCAL BUILDING INSPECTOR Grade: GN-12
2. Department: BUILDING Division: INSPECTION
3. Position Control #: 250000011 Prior Incumbent: FRANK DEANGELIS
  - a. Reason for Leaving: RESIGNATION
4. Budgetary Information:
 

Department Code: GA Budget Code: 25002520 510101 % 100

☐ Grant Funded-Name of Grant: \_\_\_\_\_ ☐ Revolving Fund ☐ Enterprise Fund
6. Employment Type:
 

☒ Full-Time: # of hours/week: 37.5 ☐ Part-Time: # of hours/week: \_\_\_\_\_

☐ Permanent ☐ Temporary: expected end date (required) \_\_\_\_\_ / \_\_\_\_\_ / \_\_\_\_\_
7. Method of Fill:
 

☐ Promotion – To be Posted Internally from: \_\_\_\_\_ / \_\_\_\_\_ / \_\_\_\_\_ to \_\_\_\_\_ / \_\_\_\_\_ / \_\_\_\_\_

☒ New Hire ☐ Transfer – Please explain: \_\_\_\_\_
8. List the top three essential functions of this position:
  1. ENFORCE PROVISIONS OF THE MASS STATE BUILDING CODE
  2. RECEIVES, REVIEWS & ISSUES BUILDING APPLICATIONS/PERMITS/CERTIFICATES
  3. PERFORMS SITE INSP & PERIODIC INSP FOR BLDG PERMITS-PLACES ASSEMBLY-COMPLAINTS
9. I have considered the following alternatives to filling this position:  
THERE ARE NO ALTERNATIVES AT THIS TIME. IT IS CRITICAL TO FILL THIS F.T. POSITION TO STY CURRENT WITH  
WORKLOAD I.E. PERMITS-INSPECTIONS-COMPLAINTS-RENEWALS-ANNUAL INSPECTIONS
10. The alternatives are less desirable than new hire action for the following reasons:-continued on reverse side-  
 \_\_\_\_\_  
 \_\_\_\_\_



Authorization To Hire Request Form

## 11. Suggested sources for specialized recruitment advertising: (other than local papers)

Human Resources will work closely with the department to post the position widely with the ProDiversity Network,ZipRecruiter, Indeed, which all have multiple targeted affinity group job boards, as well as related professional groups.

## 12. Please attach the current position description.

## 13. Signatures:

Department Head Signature: 	Date: <u>11-02-16</u>
<i>Assistant</i> Human Resources Director: 	Date: <u>11/2/16</u>
Town Administrator: _____	Date: _____

## 14. Approvals:

Date on BOS Agenda: _____	Date Approved: _____
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## 15. Notes:

## LOCAL BUILDING INSPECTOR

Grade GN-12

**PRIMARY PURPOSE**

Inspection work in connection with the enforcement and interpretation of the Massachusetts Building Code and other applicable codes relating to building construction and design, as well as zoning enforcement; other related work, as required.

**ESSENTIAL DUTIES AND RESPONSIBILITIES**

*The essential functions or duties listed below are illustrations of the various types of work performed. The omission of specific statements of duties does not exclude them from the position if the work is similar, related, or a logical assignment to the position.*

Enforce the State Building Code, Architectural Access Codes, and the Town Zoning Bylaw.

Inspect new and existing buildings and ensure compliance with various construction codes and the zoning bylaw; approve, review and verify information on permit applications; analyze permits for compliance with zoning codes; process applications; enter information into the computer; oversee the issuance of certificates of occupancy and contractor licenses and registration.

Establish inspection schedules and priorities; respond to inquiries and complaints from property owners, tenants, contractors, architects and others regarding code and bylaw interpretation, clarification of department policies and procedures, violations, complaints and general information.

Review building plans and blueprints prior to approval of issuance of building permits; ensure that approved products, materials and techniques are used during construction.

Identify code and bylaw violations, such as sign violations, illegal construction and permit violations; issue notices of violation of building code and zoning bylaws; make court appearances, when necessary.

Perform similar or related work as required, or as situation dictates.

**SUPERVISION**

Works under the general direction of the Building Commissioner, and in accordance with the applicable provisions of the Massachusetts General Laws and local bylaws; reviews all unusual problems or situations with the Commissioner prior to taking any required action.

**WORK ENVIRONMENT**

Administrative work is performed in office conditions; inspection work is conducted in the field with exposure to loud noise and hazardous conditions associated with construction sites requiring the use of basic safety equipment.

Brookline, Massachusetts  
Local Building Inspector - Building Department

The employee operates standard office equipment, hand tools (level, tape measure and siting equipment) and an automobile.

The employee has contact with other departments, such as Planning, Public Works, Health, Fire, Police, Town Clerk, and Town Counsel, and contractors, developers, and the general public.

Errors could result in personal injury, injury to others, financial loss, or delay or loss of service.

#### RECOMMENDED MINIMUM QUALIFICATIONS

##### EDUCATION AND EXPERIENCE

High school diploma; additional technical training; five years of experience in the supervision of building construction and zoning enforcement; or an equivalent combination of education and experience.

##### ADDITIONAL REQUIREMENTS

Massachusetts Certification as a Local Building Inspector  
Valid Massachusetts Driver's License, Class D

##### KNOWLEDGE, ABILITY AND SKILL

Thorough knowledge of the Massachusetts Building Code and other applicable state statutes, rules and regulations, and field inspection practices, zoning, the materials and methods of building construction and equipment, accepted requirements for building construction, fire prevention, light, ventilation and safe egress.

Ability to enforce codes and regulations fairly and impartially, read and interpret plans and specifications, interact effectively with the general public, construction personnel, technical personnel, and state and local officials, communicate effectively orally and in writing, maintain complete and accurate inspection records, and stay informed of code changes.

Communication and public relations skills.

##### PHYSICAL REQUIREMENTS

Minimal physical effort is required when performing office work; moderate physical effort is demanded when making inspections. While conducting field inspections, the employee is required to stand, walk, use hands to operate objects, tools or controls, climb ladders and scaffolding, reach with hands and arms, kneel, crouch or crawl and enter crawl spaces. Agility is required to access all areas of construction sites. Vision requirements include the ability to read routine and technical documents, use a computer, and operate a motor vehicle.

*This job description does not constitute an employment agreement between the employer and employee, and is subject to change by the employer, as the needs of the employer and requirements of the job change.*

Brookline, Massachusetts  
Local Building Inspector - Building Department





**TOWN of BROOKLINE**  
*Massachusetts*

**FIRE DEPARTMENT  
HEADQUARTERS  
PUBLIC SAFETY BUILDING**

Michael Sullivan  
Acting Chief of Operations

350 Washington Street  
PO Box 470557  
Brookline MA 02447-0557  
Tel: 617-730-2272  
Fax: 617-730-2391  
[www.brooklinema.gov](http://www.brooklinema.gov)

Mr. Mel Kleckner  
Town Administrator  
Board of Selectmen  
333 Washington Street  
Brookline MA 02445-6853

November 10, 2016

Dear Mel,

Could you please place me on the November 15, 2016 calendar to present to the Board of Selectmen a list of firefighter candidates that I am recommending be given conditional offers of employment? Following the conditional offers they will be required to go through psychological and medical exams and a Physical Abilities Test administered by the State Human Resources Division.

The six candidates are:

Aaron Cecil  
Stephen Chin  
Matthew McMahon  
Grayson Russell  
James Goff  
Seth Mucha-Kangas

Respectfully submitted

Michael J. Sullivan  
Acting Chief of Operations



**TOWN of BROOKLINE**  
*Massachusetts*

**FIRE DEPARTMENT  
HEADQUARTERS  
PUBLIC SAFETY BUILDING**

Michael Sullivan  
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Mr. Mel Kleckner  
Town Administrator  
Board of Selectmen  
333 Washington Street  
Brookline MA 02445-6853

November 9, 2016

Dear Mel,

David Heavey was a Brookline Firefighter from August 13, 2001 until he resigned in August of 2014 in order to relocate to Texas with his family. His departure from the Department was under good terms. During his time as a firefighter he was extremely well thought of, had no disciplinary issues and a very good sick leave record. Mr. Heavey has just notified me of his desire to return to the Brookline Fire Department.

I would like to re-hire Mr. Heavey to fill one of the 10 vacant positions that were approved by the BOS on September 6th. Doing so would allow us to fill an opening quickly, having a positive effect on our overtime budget and would be beneficial to the community. He would not require any additional training and could report for duty as soon as the conditions for employment have been satisfied.

I respectfully ask the Board of Selectmen to approve a conditional offer of employment for Mr. Heavey. He would be required to pass a CORI check, a pre-employment physical and the Civil Service Physical Abilities Test (PAT).

Sincerely,

A handwritten signature in dark ink, appearing to read "Michael J. Sullivan", is written over a horizontal line.

Michael J Sullivan  
Acting Chief of Operations

**Stephanie Orsini**

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**From:** Kara Brewton  
**Sent:** Wednesday, November 09, 2016 4:37 PM  
**To:** Melvin Kleckner; Stephanie Orsini  
**Cc:** Todd Kirrane  
**Subject:** FW: CCMA parking request to BoS

Mel:

Please see request below for free holiday parking on two different days. Given the timing, I'm hoping this can be on the BOS agenda for 11/15.

Thanks,  
Kara

**From:** Jill Anne Winitzer [<mailto:jawinitzer@gmail.com>]  
**Sent:** Wednesday, November 09, 2016 4:12 PM  
**To:** Kara Brewton  
**Subject:** CCMA parking request to BoS

Hello!

The Coolidge Corner Merchants Association (CCMA) would like to request a lifting of parking fees for the following events:

Shop Small Saturday (sponsored by American Express), November 26 all day;

First Light Night, December 1, from 5-8pm.

This would be promoted by the shops and help encourage visiting/shopping/supporting Coolidge Corner.

Thank you.

Jill A Winitzer  
617-201-0343

@shopsquarethread on fb, twitter, instagram

The substance of this message, including any attachments, may be confidential, legally privileged and/or exempt from disclosure pursuant to Massachusetts law. It is intended solely for the addressee. If you received this in error, please contact the sender and delete the material from any computer.

## Stephanie Orsini

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**From:** Myles Murphy  
**Sent:** Wednesday, November 09, 2016 5:06 PM  
**To:** Stephanie Orsini  
**Cc:** Todd Kirrane  
**Subject:** RE: CCMA parking request to BoS

Stephanie, I have no issue with it. I believe In the past years, we have conducted similar type of holiday relaxation on non safety parking matters in the vicinity of the stores. Meters specifically. I have cc'd Todd, so we are on the same page. Let me know if you need further. Myles

**From:** Stephanie Orsini  
**Sent:** Wednesday, November 09, 2016 4:49 PM  
**To:** Myles Murphy  
**Subject:** FW: CCMA parking request to BoS

Deputy Superintendent Murphy

Please see email below from our Planning Division requesting that the Board of Selectmen authorize free holiday parking on two upcoming dates:

November 26<sup>th</sup> for Small Business Saturday  
 December 1<sup>st</sup> for First Light Festival

Before we agree to add this to the Selectmen's agenda, the Town Administrator would like to confirm that BPD is okay with this. Do you know if this is an annual request? Any input you have is greatly appreciated.

Thank you,

*Stephanie Orsini*

Office of the Town Administrator  
 333 Washington St. | Brookline, MA 02445-6853  
 617-730-2211 | [www.brooklinema.gov](http://www.brooklinema.gov)



**From:** Kara Brewton  
**Sent:** Wednesday, November 09, 2016 4:37 PM  
**To:** Melvin Kleckner; Stephanie Orsini  
**Cc:** Todd Kirrane  
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Mel:

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Thanks,  
Kara

**From:** Jill Anne Winitzer [<mailto:jawinitzer@gmail.com>]  
**Sent:** Wednesday, November 09, 2016 4:12 PM  
**To:** Kara Brewton  
**Subject:** CCMA parking request to BoS

Hello!

The Coolidge Corner Merchants Association (CCMA) would like to request a lifting of parking fees for the following events:

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**Conservation Commission  
(As of 11/10/16)**

**MEMBERS:**

Marcus Quigley, Chair.....Term expires 2018

Matthew Garvey, Vice Chair.....Term expires 2017

Werner Lohe.....Term expires 2017

Deborah Myers.....Term expires 2016 (Will be seeking reappointment)

Gail McClelland Fenton.....Term expires 2016 (Not seeking reappointment, to be replaced by Pamela Harvey)

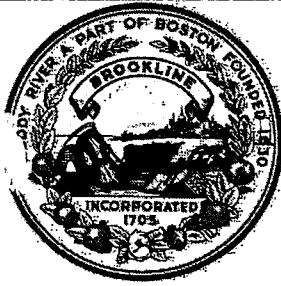
Roberta Schnoor.....Term expires 2018

Pallavi Kalia Mande.....Term expires 2018

**ASSOCIATE MEMBERS:**

Marian Lazar.....Term expires 2017

*Pamela Harvey.....Interviewed for Membership on 11/9/16  
(This position will become vacant on 11/15/16)*



NOV 1 PM 3 21

### BOARD AND COMMISSION APPLICATION FORM

NAME Pamela D. Harvey 19ADDRESS [REDACTED]HOME PHONE# [REDACTED]WORK PHONE# -E-MAIL ADDRESS [REDACTED]APPLICATION FOR SPECIFIC BOARD/COMMISSION ConservationYOUR RELEVANT AREAS OF INTEREST Wetlands protection;Open space planning and management.

WHAT TYPE OF EXPERIENCE YOU CAN OFFER TO THIS BOARD/

COMMISSION? Employed at Dept of Environmental Protection1991-2015, included wetlands protection; Currently AssociateWHAT TYPE OF ISSUES WOULD YOU LIKE TO SEE THIS BOARD/ Member of Conservation Commission.COMMISSION ADDRESS? Completion of project to assessprotection of Town open space under Article 97 or other meansHAVE YOU ATTENDED ANY BOARD/COMMISSION MEETINGS: Yes -served as Associate Conservation CommissionerARE YOU INVOLVED IN ANY OTHER TOWN ACTIVITIES? Member of Friends of Hall's Pond

DO YOU HAVE TIME CONSTRAINTS THAT WOULD LIMIT YOUR ABILITY

TO ATTEND ONE TO TWO MEETINGS A MONTH? No

Please attach a copy of your resume and mail to:  
Selectmen's Office, 333 Washington St., 6<sup>th</sup> Fl., Brookline MA 02445  
or email it to Stephanie Orsini at sorsini@brooklinema.gov.



PAMELA D. HARVEY, ESQ.

[REDACTED]  
Brookline, MA 02446  
[REDACTED]  
[REDACTED]**PROFESSIONAL EXPERIENCE****OFFICE OF APPEALS AND DISPUTE RESOLUTION, DEPT. OF ENVIRONMENTAL PROTECTION, Boston, MA****Presiding Officer.** Designated by the Commissioner to conduct adjudicatory appeals of permits and enforcement actions including ruling on motions, presiding over hearings, and writing recommended final decisions. 2007 – 2015.

Regulatory and policy development for the Chapter 91 program, as assigned by the Commissioner. 2014-2015.

Environmental, Land Use & Energy Law Conferences, Co-chair, MCLE, Annually, 9<sup>th</sup>–16<sup>th</sup>, 2007-2015.

Boston's Top Rated Lawyers, Environmental Specialty, LexisNexis Martindale-Hubbell, 2012, 2013, and 2014 Eds.

AV Preeminent Top Rated Lawyers, LexisNexis Martindale-Hubbell, 2010-2015.

Top Women Lawyers in the Northeast, LexisNexis Martindale-Hubbell, 2011 Ed.

Real Estate and Environmental Law Curriculum Advisory Committee, MCLE, 2007-2015.

Boston Bar Association, Education Committee, 2004-2013; Sustainability Task Force Member, 2011-2012.

Boston Bar Association, Environmental Law Section, Steering Committee, 2007-2015.

Massachusetts Environmental Law, State Administration and Enforcement, R. Child &amp; P. Harvey, MCLE, 2008-2014 Eds.

**COMMISSIONER'S OFFICE, DEPT. OF ENVIRONMENTAL PROTECTION, Boston, MA****Counsel to the Commissioner.** Advised the Commissioner on final decisions for appeals based on recommended decisions of administrative magistrates. Advised senior staff on related regulatory and policy development. 2000 – 2007.Environmental & Land Use Law Conferences, Co-chair, MCLE, Annually, 2<sup>nd</sup>–8<sup>th</sup>, 2001-2007.

Real Estate and Environmental Law Curriculum Advisory Committee, MCLE, 2003-2007.

Boston Bar Association, Environmental Law Section, Section Co-chair, 2001-2003; Steering Committee, 2000-2007.

Boston Bar Association, Council Member, 2003-2006; Executive Committee, 2005-2006; Education Committee, 2004-2007.

Boston Bar Foundation, Board of Trustees, 2004-2006.

Massachusetts Environmental Law, State Administration and Enforcement, R. Child &amp; P. Harvey, MCLE, 2006 Ed.

The Mercury's Falling: The Massachusetts Approach to Reducing Mercury in the Environment, P. Harvey &amp; C.M. Smith,

30 Am. J.L. &amp; Med. 245 (2004).

Integrating Economics &amp; Ecological Risk Assessment, Nat'l Center for Environmental Assessment, Cincinnati, 2001.

**OFFICE OF GENERAL COUNSEL, DEPT. OF ENVIRONMENTAL PROTECTION, Boston, MA****Acting General Counsel.** Chief legal officer of the Department, responsible for advising the Commissioner and staff on legal and policy issues. Managed 40 attorneys and the Office of Administrative Appeals. January - July 2000.**Deputy General Counsel.** Manager of legal services for Boston Operations and Bureau of Resource Protection programs, including the Central Artery, Boston Harbor, Wetlands, Chapter 91 and NPDES permitting. 1998-1999.

Commonwealth Citation for Outstanding Performance, Performance Recognition Award, CSO Strategy, 1999.

Massachusetts Senior Executive Program, John F. Kennedy School of Government, Harvard University, March 1999.

Boston Bar Association, Environmental Law Section, Steering Committee, 1998-2000.

**WETLANDS AND WATERWAYS PROGRAM, DEPT. OF ENVIRONMENTAL PROTECTION, Boston, MA****Director.** Managed the Wetlands Protection Act and Chapter 91 programs. Drafted regulations to implement the Rivers Protection Act. Retained responsibility for legal advice to the Bureau of Resource Protection. 1997-1998.

Environmental Service Award, Massachusetts Association of Conservation Commissions, 1998.

Commonwealth Citation for Outstanding Performance, Performance Recognition Award, Rivers Protection Act, 1998.

Adjunct Faculty, Water and Wetlands Law, Northeastern University School of Law, Winter 1997-1998.

Boston Bar Association, Environmental Law Section, Chair of Wetlands &amp; Waterways Committee, 1996-1997.

**OFFICE OF GENERAL COUNSEL, DEPT. OF ENVIRONMENTAL PROTECTION, Boston, MA****Chief Counsel for the Bureau of Resource Protection.** Advised Bureau on regulatory, legislative and policy issues, including the Rivers Protection Act Guidance, Stormwater Initiative, and revision of Wetlands Policies. 1995-1996.

Instructor in Bulgaria, Environmental Training Project for Central and Eastern Europe, Bulgaria, May 1995.

Boston Bar Association, Environmental Law Section, Chair of Wetlands &amp; Waterways Committee. 1995-1996.

**Deputy General Counsel.** Advised Bureau of Resource Protection on regulatory and policy issues. Lead attorney for the Office of Watershed Management and Division of Wetlands and Waterways. 1994-1995.

Commonwealth Citation for Outstanding Performance, Performance Recognition Award, Individual, 1994.

**Assistant General Counsel.** Advised Division of Water Pollution Control on regulatory and policy issues. 1991-1994.

**GASTON & SNOW, Boston, MA**

**Summer Associate.** Securities regulation and adverse possession issues. Assisted with a major real estate closing. 1989.

**ENVIRONMENTAL PROTECTION AGENCY, Boston, MA**

**Law Clerk.** National Environmental Policy Act, piercing the corporate veil and preemption issues. 1988.

**BELCHERTOWN CONSERVATION COMMISSION, Belchertown, MA**

**Administrator.** Responsible for administering the Wetlands Protection Act and advising the Commission on local development and land use issues. 1985-1987.

**MASSACHUSETTS SOCIETY OF MUNICIPAL CONSERVATION PROFESSIONALS, Medford, MA**

**Editor and Project Manager.** Edited, co-authored and prepared for publication a technical handbook for administrators of conservation commissions and departments. 1986-1987.

**EDUCATION**

**BOSTON UNIVERSITY SCHOOL OF LAW, Boston, MA**

J.D. cum laude, May 1990

**Honors:** Sylvia Beinecke Robinson Award, for the most significant contribution to the life of the law school, awarded by the Dean and faculty.

American Jurisprudence Prize Award, for Trial Advocacy

Executive Editor, American Journal of Law and Medicine

Note, Educated Guesses: Health Risk Assessment in Environmental Impact Statements,  
16 Am. J.L. & Med. 399 (1990)

Edward F. Hennessey Scholar, Top 25% third year class, 1990

Paul J. Liacos Scholar, Top 25% second year class, 1989

G. Joseph Tauro Scholar, Top 25% first year class, 1988

**ANTIOCH/NEW ENGLAND GRADUATE SCHOOL, Keene, NH**

M.S. Resource Management and Administration, 1983

**HAMILTON COLLEGE, Clinton, NY**

A.B. Literature, 1980

**PROFESSIONAL ACTIVITIES**

**BOSTON BAR ASSOCIATION, Boston, MA**

Executive Committee, 2005-2006; Council Member, elected to 3 year term, 2003-2006.

Education Committee, 2004-2013.

Environmental Law Section, Co-Chair, 2001- 2003; Steering Committee, 1995-2015.

**BOSTON BAR FOUNDATION, Boston, MA**

Trustee, 2004-2006.

**MASSACHUSETTS CONTINUING LEGAL EDUCATION, Boston, MA**

Co-chair or faculty, annually, 1994-2015.

Real Estate and Environmental Law Curriculum Advisory Committee, 2003-2015.

**BAR ADMISSION, MASSACHUSETTS, 1990**



**OFFICE OF THE TOWN ADMINISTRATOR  
MEMORANDUM**

**TO:** Board of Selectmen

**FROM:** Melvin A. Kleckner, Town Administrator *[Signature]*

**RE:** 9<sup>th</sup> Elementary School at Baldwin Project Oversight Committee

**DATE:** November 9, 2016

With the 9<sup>th</sup> Elementary School project at Baldwin moving forward, it is important at this time to establish a "building committee" to facilitate its further study and design and to interface with the public and key stakeholders. Since this project will not be participating in the Massachusetts School Building Authority (MSBA) program, it is not necessary to follow the prescriptive composition or charge for building committees required by this agency. Rather, it is suggested that the Town follow a local process creating a Project Oversight Committee (POC) that has been used in the past. To date, the Building Commission, Board of Selectmen and the School Committee have formally endorsed this concept and appointed a member to serve as the co-chair of the POC.

Please find attached the proposed composition and Charge for a POC for the 9<sup>th</sup> Elementary School at Baldwin using the format and language from prior Town project oversight committees. Superintendent Andrew Bott and I have worked together and canvassed our respective boards to recommend the following slate of candidates for this committee pursuant to the Charge.

- 1 member of the School Committee
  - David Pollak (approved by the School Committee)
- 1 member of the Board of Selectmen
  - Nancy Daly (approved by the Board of Selectmen)
- 1 member of the Building Commission
  - Janet Fierman (approved by the Building Commission)

Other members of the committee are as follows:

- 1 member of the Park and Recreation Commission
  - Clara Batchelor
- 2 persons representing the school parent community (School Council or PTO)
  - TBD
  - TBD
- 2 persons representing the interests of the greater Baldwin neighborhood
  - Steve Brooks
  - Blair Hines
- The Town Administrator or designee
- The Building Commissioner or designee
- The Superintendent of Schools
- The Deputy Superintendent of Schools for Administration and Finance
- The Deputy Superintendent of Schools for Teaching and Learning
- A School Principal Representative

Your cooperation in approving this Charge and appointing the recommended slate at your earliest convenience would be most appreciated.

cc: Mary Ellen Dunn, Deputy Superintendent for Administration and Finance

Ray Masak, Project Manager, Building Department

Melissa Goff, Deputy Town Administrator

### **Building Committee for the 9<sup>th</sup> Elementary School at Baldwin**

- There shall be established a Building Committee for the 9<sup>th</sup> Elementary School at Baldwin. In keeping with recent practice on the Devotion School project, this committee shall be modeled using the MSBA Building Committee guidelines as a starting point. The Committee shall consist of a member of the Building Commission, Board of Selectmen and School Committee, each selected by their designated boards, who together shall serve as co-chairs of the Committee. The other members of the Committee shall be as listed below. The Board of Selectmen, working with the Town Administrator and staff, shall provide candidates to fill the Park and Recreation Commission representative and the two greater Baldwin neighborhood positions. The School Committee, working with the Superintendent and staff, shall provide candidates to fill the two school parent community positions. The Superintendent shall designate the school principal representative. The slate of members shall be ratified by the Board of Selectmen and the School Committee.
  - 1 member of the Park and Recreation Commission
  - 2 persons representing the school parent community (School Council or PTO)
  - 2 persons representing the interests of the greater Baldwin neighborhood.
  - The Town Administrator or designee
  - The Building Commissioner or designee
  - The Superintendent of Schools
  - The Deputy Superintendent of Schools for Administration and Finance
  - The Deputy Superintendent of Schools for Teaching and Learning
  - A School Principal Representative
- The Building Committee shall advise and support the Building Commission, Board of Selectmen and School Committee in connection with their authority and responsibilities for the construction and alteration of town buildings and structures under Article 3.7 of the General By-Laws of the Town of Brookline. The Building Committee shall also be the main body responsible for engaging and informing the public on the project.
- The Building Committee shall work with the Project Manager and consultants in support of the project. The Project Manager shall attend all the meetings of the Building Committee and serve as the Committee's staff person.
- The Building Committee shall be concerned with all aspects of the project including budget, schedule, safety, public relations, coordination of town agencies, logistics, and contract compliance.



## ARTICLE 4

### REVISED PETITIONER MOTION

VOTED that the Town amend Article 8.23 of the Town's General By-laws, Tobacco Control, as follows (language to be deleted appearing in ~~strike through~~, new language appearing in **bold underline**; and changes from the warrant article appearing in **bold underlining and italics**):

#### ARTICLE 8.23 TOBACCO CONTROL

##### SECTION 8.23.1 - PURPOSE

In order to protect the health, safety and welfare of the inhabitants of the Town of Brookline, including but not limited to its younger population, by restricting the sale of and public exposure to tobacco and e-cigarette products known to be related to various and serious health conditions such as cancer, this by-law shall limit and restrict the sale of and public exposure to tobacco and e-cigarette products within the Town of Brookline.

##### SECTION 8.23.2 - DEFINITIONS

- a. ~~Tobacco – Cigarettes, cigars, snuff or tobacco in any of its forms.~~ **Tobacco - Any product containing, made, or derived from tobacco that is intended for human consumption, whether smoked, chewed, absorbed, dissolved, inhaled, snorted, sniffed, or ingested by any other means, including, but not limited to: cigarettes, cigars, little cigars, chewing tobacco, pipe tobacco or snuff. "Tobacco" does not include any product that has been approved by the United States Food and Drug Administration either as a tobacco use cessation product or for other medical purposes and which is being marketed and sold or prescribed solely for the approved purpose.**
- b. E-Cigarette – Any electronic nicotine delivery product composed of a mouthpiece, heating element, battery, and/or electronic circuits that provides a vapor of liquid nicotine to the user, or relies on vaporization of solid nicotine or any liquid, with or without nicotine. This term shall include such devices whether they are manufactured as e-cigarettes, e-cigars, e-pipes, hookah pens, or under any other product name.
- c. Smoking - Lighting of, or having in one's possession any lighted cigarette, cigar, pipe or other tobacco product or non-tobacco product designed to be combusted and inhaled. The activation of or inhalation of vapor from an e-cigarette shall be considered smoking under this by-law.

- d. Tobacco Vending Machine - A mechanical or electrical device which dispenses tobacco or e-cigarette products by self-service, with or without assistance by a clerk or operator.
- e. Self-Service Display – Any display from which customers may select a tobacco or e-cigarette products without assistance from an employee or store personnel.
- f. Minor - A person under twenty-one years of age.
- g. Employee - An individual who performs services for an employer.
- h. Employer - An individual, partnership, association, corporation, trust or other organized group of individuals that utilizes the services of one (1) or more employees.
- i. Workplace - An indoor area, structure or facility or a portion thereof, at which one or more employees perform a service for compensation for the employer, other enclosed spaces rented to or otherwise used by the public; where the employer has the right or authority to exercise control over the space.
- j. Food Service Establishment - An establishment having one or more seats at which food is served to the public.
- k. Health Care Institution - An individual, partnership, association, corporation or trust or any person or group of persons that provides health care services and employs health care providers licensed, or subject to licensing, by the Massachusetts Department of Health under M.G.L. c. 112. Health care institution includes hospitals, clinics, health centers, pharmacies, drug stores and doctors' and dentists' offices.
- l. Entity - any single individual, group of individuals, corporation, partnership, institution, employer, association, firm or any other legal entity whether public or private.
- m. Educational Institution - any public or private college, normal school, professional school, scientific or technical institution, university or other institution furnishing a program of higher education.
- n. Retail Establishment - any store that sells goods or articles of personal services to the public.
- o. Blunt Wrap - Any tobacco product manufactured or packaged as a wrap or as a hollow tube made wholly or in part from tobacco that is designed or intended to be filled by the consumer with loose tobacco or other fillers.**
- p. Characterizing flavor - A distinguishable taste or aroma, other than the taste or aroma of tobacco, menthol, mint or wintergreen, imparted or detectable either prior to or during consumption of a tobacco or e-cigarette products or component**



part thereof, including, but not limited to, tastes or aromas relating to any fruit, chocolate, vanilla, honey, candy, cocoa, dessert, alcoholic beverage, herb or spice; provided, however, that no tobacco product shall be determined to have a characterizing flavor solely because of the use of additives or flavorings that do not contribute to the distinguishable taste or aroma of the product or the provision of ingredient information.

g. Component part - Any element of a tobacco or e-cigarette products, including, but not limited to, the tobacco, filter and paper, but not including any constituent.

r. Constituent - Any ingredient, substance, chemical or compound, other than tobacco, water or reconstituted tobacco sheet, that is added by the manufacturer to a tobacco or e-cigarette products during the processing, manufacturing or packaging of the tobacco or e-cigarette products. Such term shall include a smoke constituent.

s. Distinguishable - Perceivable by either the sense of smell or taste.

t. Smoke Constituent: Any chemical or chemical compound in mainstream or sidestream tobacco smoke that either transfers from any component of the tobacco or e-cigarette product to the smoke or that is formed by the combustion or heating of tobacco, additives or other component of the tobacco or e-cigarette product.

u. Flavored tobacco or e-cigarette product - Any tobacco product or e-cigarette component part thereof that contains a constituent that has or produces a characterizing flavor. A public statement, claim or indicia made or disseminated by the manufacturer of a tobacco or e-cigarette products, or by any person authorized or permitted by the manufacturer to make or disseminate public statements concerning such tobacco or e-cigarette products, that such tobacco or e-cigarette products has or produces a characterizing flavor shall constitute presumptive evidence that the tobacco or e-cigarette products is a flavored tobacco or e-cigarette products.

v. Retail tobacco store: An establishment that is not required to possess a retail food permit whose primary purpose is to sell or offer for sale but not for resale, tobacco and/or e-cigarette products and tobacco paraphernalia, in which the sale of other products is merely incidental, and in which the entry of persons under the minimum legal sales age is prohibited at all times, and maintains a valid permit for the retail sale of tobacco products as required to be issued by the Brookline Board of Health.

w. Cigar: Any roll of tobacco that is wrapped in leaf tobacco or in any substance containing tobacco with or without a tip or mouthpiece not otherwise defined as a cigarette under Massachusetts General Law, Chapter 64C, Section 1, Paragraph 1.

### SECTION 8.23.3 REGULATED CONDUCT

#### a. Public Places

(1) To the extent that the following are not covered by applicable State laws or regulations, no person shall smoke in any rooms or interior areas in which the public is permitted. This includes, but is not limited to, any food service establishment, health care institution, classroom, lecture hall, museum, motion picture theater, school, day care facility, reception area, waiting room, restroom or lavatory, retail store, bank (including ATMs), hair salons or barber shops and meetings of government agencies open to the public.

(2) Taxi/Livery services licensed by the Town of Brookline shall be provided in smoke-free vehicles. The restriction of smoking in taxi/livery vehicles applies to drivers as well as passengers. Vehicles shall be posted in such a manner that their smoke-free status can be readily determined from the outside of the vehicle.

(3) Licensed Inns, Hotels, Motels and Lodging Houses in the Town of Brookline must provide smoke-free common areas. Licensed Inns, Hotels and Motels in the Town of Brookline must designate 100% of individual dwelling units or rooms as non-smoking.

(4) The use of tobacco or e-cigarette products by minors or school personnel is prohibited in or upon any public sidewalk or other public property located within four hundred (400) feet of Brookline High School grounds. The Commissioner of Public Works shall erect and maintain signage identifying the locations where smoking is prohibited under this paragraph (4). Such signage shall be erected so as to notify the public of the smoking prohibition and the areas affected thereby.

#### b. Workplaces

(1) Smoking in workplaces is prohibited.

(2) Notwithstanding subsection (1), smoking may be permitted in private residences; except during such time when the residence is utilized as part of a business as a group childcare center, school age child care center, school age day or overnight camp, or a facility licensed by the department of early education and care or as a health care related office or facility.

(3) Every establishment in which smoking is permitted pursuant to this by-law shall designate all positions where the employee's presence in an area in which smoking is permitted to be "smoking positions." The establishment shall notify every applicant for employment in a smoking position, in writing, that the position may cause continuous exposure to secondhand smoke, which may be hazardous to the employee's health.

(4) No establishment in which smoking is permitted pursuant to this by-law may require any employee whose effective date of employment was on or before November 1, 1994 to accept a designated smoking position as a condition of continued employment by the employer.

(5) No establishment in which smoking is permitted pursuant to this by-law may discharge, refuse to hire, or otherwise discriminate against any employee or applicant for employment by reason of such person's unwillingness to be subjected to secondhand smoke exposure unless the employee has been hired for a designated smoking position and has been so notified in writing at the time of hiring.

(6) It is the intent of this by-law that a designated smoking position shall not be considered suitable work for purposes of M.G.L. c. 151A, and that an employee who is required to work in a smoking position shall have good cause attributable to the employer for leaving work. c. E-cigarette Usage – Locations Prohibited (1) In addition to the smoking prohibitions set forth in this bylaw, the use of e-cigarettes is further prohibited wherever smoking is prohibited under M.G.L. Chapter 270, Section 22 (the “Smoke-Free Workplace Law”), and in all locations listed in Section 8.23.3 of this by-law. The Director of Health and Human Services and/or his or her designee(s) shall enforce this section in accordance with Section 8.23.6.

#### **SECTION 8.23.4 - POSTING REQUIREMENTS**

Every person having control of a premises where smoking is prohibited by this by-law, shall conspicuously display on the premises, including the primary entrance doorways, signs reading "Smoking Prohibited By Law." Posting of the international symbol for "No Smoking" shall be deemed as compliance.

#### **SECTION 8.23.5 - SALE AND DISTRIBUTION OF TOBACCO AND E-CIGARETTE PRODUCTS**

a. Permit Requirement – No Entity otherwise permitted to sell tobacco or e-cigarette products shall sell such products within the Town of Brookline without a valid tobacco sales permit issued by the Director of Public Health. Permits must be posted in a manner conspicuous to the public. Tobacco sales permits shall be renewed annually by June 1st, at a fee set forth in the Department’s Schedule of Fees and Charges.

b. Prohibition of Tobacco Vending Machines – The sale of tobacco or e-cigarette products by means of vending machines is prohibited.

c. Restrictions on the Distribution of Tobacco or e-cigarette Products - No person, firm, corporation, establishment or agency shall distribute tobacco or e-cigarette products free of charge or in connection with a commercial or promotional endeavor within the Town of Brookline. Such endeavors include, but are not limited to, product “giveaways”, or

distribution of a tobacco or e-cigarette product as an incentive, prize, award or bonus in a game, contest or tournament involving skill or chance.

d. Prohibition of Sales to Minors - No person, firm, corporation, establishment, or agency shall sell tobacco or e-cigarette products to a minor.

e. Self-Service Displays – All self-service displays as defined by 8.23.2 (e) are prohibited. All commercial humidors including, but not limited to walk-in humidors must be locked.

f. Prohibition of the Sale of Tobacco Products and e-cigarettes by Health Care Institutions - No health care institution located in the Town of Brookline shall sell or cause to be sold tobacco or e-cigarette products. Additionally, no retail establishment that operates or has a health care institution within it, such as a pharmacy or drug store, shall sell or cause to be sold tobacco or e-cigarette products.

g. Prohibition of the Sale of Tobacco and e-cigarette Products by Educational Institutions - No educational institution located in the Town of Brookline shall sell or cause to be sold tobacco or e-cigarette products. This includes all educational institutions as well as any retail establishments that operate on the property of an educational institution.

#### **h. Required Signage**

**1. The owner or other person in charge of an entity authorized to sell tobacco or e-cigarette products at retail shall conspicuously post signage provided by the Town of Brookline that discloses current referral information about smoking cessation.**

**2. The owner or other person in charge of an entity authorized to sell tobacco or e-cigarette products at retail shall conspicuously post a sign stating that “The sale of tobacco or e-cigarette products to someone under the minimum legal sales age of 21 years of age is prohibited.” The notice shall be no smaller than 8.5 inches by 11 inches and shall be posted conspicuously in the retail establishment in such a manner so that they may be readily seen by a person standing at or approaching the cash register. The notice shall directly face the purchaser and shall not be obstructed from view or placed at a height of less than four (4) feet or greater than eight (8) feet from the floor.**

#### **i. Tobacco Sales**

**1. No Tobacco Product Sales Permit holder shall allow any employee to sell tobacco or e-cigarette products until such employee has received a copy of this By-law and federal and state laws regarding the sale of tobacco and e-cigarette and signs a statement, a copy of which will be placed on file in the**

office of the employer, that he/she has read the regulation and applicable state and federal laws.

2. Identification: Each person selling or distributing tobacco products, as defined herein, shall verify the age of the purchaser by means of a valid government-issued photographic identification containing the bearer's date of birth that the purchaser is 21 years old or older.

3. All retail sales of tobacco or e-cigarette products within the Town of Brookline must be face-to-face between the seller and the buyer and occur at the permitted location.

4. Original Cigar Package Price - All single cigars shall be sold for no less than two dollars and fifty cents (\$2.50). No person shall sell or distribute or cause to be sold or distributed any original factory-wrapped package of two or more cigars, unless such package is priced for retail sale at \$5.00 or more. This section shall not apply to a person or entity engaged in the business of selling or distributing cigars for commercial purposes to another person or entity engaged in the business of selling or distributing cigars for commercial purposes with the intent to sell or distribute outside the boundaries of Brookline.

5. No entity shall sell or distribute or cause to be sold or distributed any flavored tobacco or e-cigarette products, except in retail tobacco stores.

6. No entity shall sell or distribute or cause to be sold or distributed blunt wraps.

#### SECTION 8.23.6 VIOLATIONS AND PENALTIES

a. Any person who violates any provision of this by-law, or who smokes in any area in which a "Smoking Prohibited By Law" sign, or its equivalent, is conspicuously displayed, shall be punished by a fine of \$100 for each offense. For a first violation of this section, and for any subsequent violation, the violator may be afforded the option of enrolling in a smoking cessation/education program approved by the Director of Health and Human Services or his/her designee(s). Proof of completion of such approved program shall be in lieu of the fines set forth in this Section and in Section 10.3 of these By-laws.

b. Any person having control of any premises or place in which smoking is prohibited who allows a person to smoke or otherwise violate this bylaw, shall be punished by a fine of \$100 for a first offense, \$200 for a second offense, and \$300 for a third or subsequent offense.

c. ~~d.~~ Any entity violating any other section of this by-law shall receive a fine of \$300.00 for each offense.

~~d. c.~~ Employees who violate any provision of Section 8.23.3(b) shall be punished by a fine of \$100 per day for each day of such violation.

e. Violations of this by-law may be dealt with in a noncriminal manner as provided in PART X of the Town by-laws.

f. Each calendar day an entity operates in violation of any provision of this regulation shall be deemed a separate violation.

g. No provision, clause or sentence of this section of this regulation shall be interpreted as prohibiting the Brookline Health Department or a Town department or Board from suspending, or revoking any license or permit issued by and within the jurisdiction of such departments or Board for repeated violations of this by-law.

#### SECTION 8.23.7 SEVERABILITY

Each provision of this by-law shall be construed as separate to the extent that if any section, sentence, clause or phrase is held to be invalid for any reason, the remainder of the by-law shall continue in full force and effect.

PETITIONER'S ADDITIONAL EXPLANATION  
AND POSSIBLE DIVIDED VOTE

This submission includes the option of a divided vote on Article 22, providing a format for a separate vote by Town Meeting on the question of whether the exemptions in Section 5.22 of the Zoning By-Law (allowing FAR to be exceeded) should apply in T, F and M Districts, where the base FAR (even without the exemptions) is already high.

The **First Vote** includes changes to the Zoning By-Law proposed by the Moderator's Committee to address core issues, including abuse of the By-Law through the construction of "unfinished" spaces in "basements" and "attics" that add to bulk without being subject to any abutter notice or design review. The First Vote would thus introduce special permit review, including notice to abutters and the requirement of consistency with the scale of the neighborhood, for the construction of space that exceeds the otherwise-allowable FAR. This would effectively treat the construction of both "finished" and "unfinished" spaces uniformly, in recognition of the fact that both types of spaces contribute equally to building bulk, and also treat uniformly all such construction and additions to new and existing buildings. The First Vote would also introduce a special permit requirement for exterior modifications in connection with basement and attic conversions, again assuring notice to abutters and consistency with the neighborhood, and treating basement and attic conversions consistently with other conversions and additions, which already require a special permit. It includes the Planning Department's recommendation that all conversions result in no more than 130% of FAR, and includes changes assuring consistency of language within the By-Law. (See Petitioner's Explanation).

What the **First Vote** does **not** include is By-Law changes that would eliminate the application of the Section 5.22 exemptions (which allow buildings at 120%, 130% or, now, even 150% of the otherwise-allowable FAR) in T, F and M districts. The **Second Vote**, if approved, would eliminate those Section 5.22 exemptions in T, F and M districts. The divided vote poses the issue if Town Meeting wishes to address the T, F and M issue separately.

On the one hand, as set forth in the report of the Moderator's Committee to the May 2016 Town Meeting, the base FAR in T, F and M Districts is already high, and, for example, the Section 5.22 exemptions would potentially allow the density of properties in T Districts to increase even more, to 200% or 250% of the current density, with corresponding impacts on population, school population, congestion, and so on. The actual incursions of incompatible buildings in T Districts have in recent years led to proposals for downzoning and for Neighborhood Conservation Districts. Although the base FAR in those districts would remain the same until rezoned, the potential to significantly exceed that FAR would be eliminated by the Second Vote.

On the other hand, the Moderator's Committee recognized that elimination of the Section 5.22 exemptions did not address the very high base FAR limits in T, F and M districts, and that eliminating the exemptions would potentially make some homes non-conforming and affect some individuals seeking to expand their homes. Since Article 22 was filed, several existing homes in T Districts that have applied for building permits for conversions would be affected by the elimination of the Section 5.22 exemptions.

Therefore, a **divided vote is attached**. If only the First Vote is passed, the Section 5.22 exemptions would continue for homeowners in T, F and M District exemptions but there could

be substantial increases in density in those districts. If the Second Vote is also passed, the exemptions would be eliminated in T, F and M districts, reducing the potential increases in density, but existing homeowners would not be able to utilize Section 5.22. The decision is ultimately for Town Meeting, and this submission is an effort to facilitate that decision.

## FIRST VOTE –

VOTED: That the Town amend the Brookline Zoning By-Law as follows (additions appear as underlined bold text; deletions appear with strike-throughs):

### A. By amending Section 5.09.2 (Design Review, Scope) as follows:

#### 2. Scope.

In the following categories all new structures and outdoor uses, exterior alterations, exterior additions, and exterior **modifications or** changes, including exterior demolitions, which require a building permit from the building department under the Building Code, shall require a special permit subject to the community and environmental impact and design review procedures and standards hereinafter specified. Exterior alterations, exterior additions and exterior changes **(except as provided below)**, including fences, walls, and driveways, to residential uses permitted by right in S, SC, T, and F districts; signs as regulated in §§ 7.02, and 7.03; and regulated facade alterations as defined and regulated in §7.06 shall be exempt from the requirements of this section.

....

j. any exterior addition **or exterior modification** for which a special permit is requested pursuant to §5.22

.....

**n. any construction of newly created space, whether or not habitable, finished or built out, where such space substantially satisfies the requirements for habitability under the State Building Code or could with the addition of windows or doors and without other significant alterations to the exterior of the building be modified to substantially meet such habitability requirements, and which space if finished or built out or converted to habitable space would result in the total Gross Floor Area of the structure being greater than the permitted Gross Floor Area in Table 5.01. In granting any such special permit, the Board of Appeals, in addition to the requirements of §5.09 and §§9.03 to 9.05, shall be required to find that the massing, scale, footprint, and height of the building are not substantially greater than, and that the setbacks of the building are not substantially less than, those of abutting structures and of other structures conforming to the zoning by-law on similarly sized lots in the neighborhood. In granting a special permit for construction of such non-habitable space, the Board of Appeals shall set forth as a condition of the special permit the extent to which such space may or may not be converted to habitable space in the future pursuant to Section 5.22 or otherwise, with the allowed future conversion to habitable space no greater than the applicant's representation of the intended amount of future conversion.**



**B. By amending Section 5.09.3.c.4 (Procedure, Photographs) as follows:**

4. Photographs – Photographs show the proposed building site and surrounding properties, and of the model (if required). Applications for alterations, modifications and additions shall include photographs showing existing structure or sign to be altered and its relationship to adjacent properties.

**C. By amending Section 5.09.4.c (Design Review Standards, Relation to Streetscape) as follows:**

c. Relation of Buildings to the Form of the Streetscape and Neighborhood—Proposed development shall be consistent with the use, scale, massing, height, yard setbacks and architecture of existing buildings and the overall streetscape of the surrounding area, including existing abutting buildings and existing buildings that conform to the zoning by-law on lots of similar size in the neighborhood. The Board of Appeals may require modification in massing, scale, height, setbacks or design so as to make the proposed building more consistent with the form of such existing buildings and the existing streetscape, and may rely upon data gathered that documents the character of the existing streetscape in making such a determination. Examples of changes that may be required include addition of bays or roof types consistent with those nearby; alteration of the massing, scale, setbacks and height of the building to more closely match such existing buildings and the existing streetscape, or changes to the fenestration. The street level of a commercial building should be designed for occupancy and not for parking. Unenclosed street level parking along the frontage of any major street as listed in paragraph 2., subparagraph a. of this section is strongly discouraged. Otherwise, street level parking should be enclosed or screened from view.

**D. By amending Sections 5.22.1.a, 5.22.1.b and 5.22.1.c (Exceptions to Maximum Floor Area Ratio (FAR) Regulations for Residential Units, General Provisions) as follows:**

a. Any expanded unit (individual residential units subject to an increase in gross floor area as per this Section) shall not be eligible to be ~~subsequently~~ divided into multiple units. If the limitations set forth in this paragraph 1, subparagraph a, or the limitations in paragraph 2 regarding separate dwelling units, should be found to be invalid, § 5.22 shall be deemed null and void in its entirety, and no increase in gross floor area shall be allowed pursuant to § 5.22.

b. Insofar as practicable, the additional floor area allowed pursuant to this Section shall be located and designed so as to minimize the adverse impact on abutting properties and ways, and interior conversions shall be considered preferable to exterior additions. Any exterior additions or modifications shall further comply with the provisions of §5.09, including §5.09.4.c, §§ 9.03 to 9.05, and this Section. The limitations and standards set forth in such provisions shall also guide the Zoning Board of Appeals in determining under G.L. c.40A, §6 whether a change, extension or alteration is substantially more detrimental to the neighborhood than an existing nonconforming use.

c. Additional floor area shall be allowed pursuant to this Section only if the Certificate of Occupancy for the original construction was granted at least ten years prior to the date of the application for additional gross floor area under this section or if there is other evidence of lawful occupancy at least ten years prior to the date of such application. **In the case of the substantial demolition of a structure or of an increase in the number of units, the time period prior to such demolition or unit increase shall not be counted toward the required ten-year waiting period, and the ten-year waiting period shall be deemed to commence with the grant of a new Certificate of Occupancy after such demolition or unit increase. As used in this paragraph 1, subparagraph c, “substantial demolition” shall mean the act of pulling down, destroying, removing or razing a structure or a significant portion thereof, by removing one or more sides of the structure, or removing the roof, or removing 25% or more of the structure.** If the limitation set forth in this paragraph 1, subparagraph c should be found to be invalid, § 5.22 shall be deemed null and void in its entirety, and no increase in gross floor area shall be allowed pursuant to § 5.22.

**E. By amending Section 5.22.2 (Exceptions to Maximum Floor Area Ratio (FAR) Regulations for Residential Units, Conversion of Attic or Basement Space) as follows:**

**2. Conversion of Attic or Basement Space in Single-Family and Two-Family Residential Dwellings.**

Conversions of attics or basements to habitable space for use as part of an existing single- or two-family dwelling, not as a separate dwelling unit, and effectively increasing the gross floor area of the dwelling, shall be allowed ~~as-of-right~~, provided the following conditions are met in addition to the conditions set forth in paragraph 1 of this Section:

a. Any exterior modifications that are made to the structure to accommodate the conversion shall be subject to **the procedures, limitations, and conditions specified in §5.09, §§9.03 to 9.05, and this Section.** ~~the façade and sign design review process as provided in §7.06, paragraph 1 of the Zoning Bylaw.~~ No exterior modifications made under the provisions of this subparagraph may project above the ridge of the roof nor project beyond the eaves.

b. Any increase in gross floor area through such basement or attic conversion shall be limited such that the total resulting gross floor area of the building(s) after such conversion is no more than **130%** ~~150%~~ of the total permitted in Table 5.01 (the “permitted gross floor area”).

**F. By amending Sections 5.22.3.a., 5.22.3.a.1 and 5.22.3.a.2 (Special Permit for Exceeding Gross Floor Area for Residential Dwellings) as follows:**

a. The Board of Appeals may allow, by special permit, a maximum gross floor area greater than permitted gross floor area for an existing residential building(s) on a single lot, subject to the procedures, limitations, and conditions specified in §5.09, **§§9.03 to 9.05**, and this Section for an existing residential building which meets the following basic requirements:

1) The existing building(s) is located on a lot (or part of a lot) in a district with a permitted maximum floor area ratio no greater than 1.5.

2) The existing building contains at least one residential unit but no more than ~~four~~ two total units. For the purpose of this paragraph 3, subparagraph (a)(2), total units shall be defined to include all residential dwellings, offices, and commercial spaces within the building.

**G. By amending Section 7.06.1.c (Regulated Façade Alterations) as follows:**

~~Conversion of attic or basement space in Single Family and Two Family Residential Dwellings where exterior modifications beyond that required by the State building code are made.~~

\* \* \*

**SECOND VOTE --**

VOTED: That the Town amend the Brookline Zoning By-Law as follows (additions appear as underlined bold text; deletions appear with strike-throughs; changes from First Vote are shaded):

**H. By amending Section 5.22.2 (Exceptions to Maximum Floor Area Ratio (FAR) Regulations for Residential Units, Conversion of Attic or Basement Space) as follows:**

2. Conversion of Attic or Basement Space in Single-Family and Two-Family Residential Dwellings.

Conversions of attics or basements to habitable space for use as part of an existing single- or two-family dwelling, not as a separate dwelling unit, and effectively increasing the gross floor area of the dwelling, shall be allowed ~~as of right~~ **in S and SC Districts** provided the following conditions are met in addition to the conditions set forth in paragraph 1 of this Section:

**I. By amending Sections 5.22.3.a.1 (Special Permit for Exceeding Gross Floor Area for Residential Dwellings) as follows:**

a. The Board of Appeals may allow, by special permit, a maximum gross floor area greater than permitted gross floor area for an existing residential building(s) on a single lot, subject to the procedures, limitations, and conditions specified in §5.09, ~~§§9.03 to 9.05~~, and this Section for an existing residential building which meets the following basic requirements:

1) The existing building(s) is located on a lot (or part of a lot) in ~~a~~ **an S or SC District** with ~~a permitted maximum floor area ratio no greater than 1.5.~~

**J. By amending Section 5.22.3.b.2 as follows:**

~~In all T, F, M 0.5, M 1.0, and M 1.5 Districts, a special permit may be granted for an increase in floor area that is less than or equal to 20% of the permitted gross floor area, whether it be for an~~

## 11. - 14

exterior addition, interior conversion, or a combination of the two. The total increase in floor area granted by special permit for all applications made under this paragraph 3, subparagraph (b)(2), or any prior version of Section 5.22, shall not exceed 20% of the permitted gross floor area.